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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

7 TOP RANK BUILDERS, et al.,

8 Plaintiffs,

9 vs.

10 WILLIAM B. BROWNING, et al.,

11 Defendants.
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Case No. 2:16-cv-02903-APG-CWH

ORDER

13 Presently before the court is Plaintiffs Top Rank Builders and Efrain Rene Morales' default
14 form (ECF No. 16), which was docketed under the filing event "motion for entry of clerk's
15 default," filed on March 14, 2017.

16 Plaintiffs filed their complaint (ECF No. 1) on December 15, 2016. On March 13, 2017,
17 Plaintiffs filed a default form (ECF No. 14) for Defendant American Wind and Solar, Inc., which
18 includes a blank signature block for the Clerk of Court. Attached to the form is an affidavit of
19 service stating that this defendant was served on January 27, 2017. (*Id.* at 2.) The Clerk of Court
20 entered a notice (ECF No. 15) informing Plaintiffs' attorney that an outdated form was filed. On
21 March 14, 2017, Plaintiffs filed an updated default form (ECF No. 16) along with the same
22 affidavit of service. On March 15, 2017, the Clerk of Court entered a notice (ECF No. 17) advising
23 Plaintiffs' attorney to file a motion requesting entry of clerk's default along with the form and
24 affidavit of service. To date, Plaintiffs have not done so. Meanwhile, on March 16, 2017—fifty
25 two days after being served with the complaint—Defendant American Wind and Solar, Inc. filed an
26 answer (ECF No. 18) and is now participating in discovery in this case.

27 Under Federal Rule of Civil Procedure 12(a)(1)(A)(I), a defendant must serve an answer
28 within 21 days after being served with the summons and complaint. Failure to do so may result in

1 an entry of default under Rule 55 of the Federal Rules of Civil Procedure. Specifically, under Rule
2 55(a), the clerk must enter default “[w]hen a party against whom a judgment for affirmative relief is
3 sought has failed to plead or otherwise defend.”

4 Although it appears that by filing the default form Plaintiffs were attempting to move for
5 entry of a clerk’s default under Rule 55(a), Plaintiffs never filed a motion as they were directed to
6 do so. Thus, the Clerk of Court did not enter a default against Defendant American Wind and
7 Solar, Inc. Plaintiffs did take any other action with respect to this Defendant after it filed its
8 answer, and this Defendant participated in the Rule 26(f) conference and in drafting the proposed
9 discovery plan and scheduling order in this case. (*See* ECF No. 24.) To the extent that Plaintiffs
10 were attempting to move for the clerk’s entry of default against Defendant American Wind and
11 Solar, Inc., it appears that Plaintiffs have abandoned this motion. The court therefore will deny the
12 motion.

13 IT IS SO ORDERED.

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15 DATED: June 7, 2017

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20 **C.W. Hoffman, Jr.**
21 **United States Magistrate Judge**
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